

legal plans

Assisting a person
with dementia in
planning for the future



plan for the future

While it's important for everyone to plan for the future, legal plans are especially vital for a person with dementia.

Dementia is a general term for the loss of memory, decision-making and other intellectual abilities serious enough to interfere with daily life. Alzheimer's disease is the most common form of dementia.

Once a person is diagnosed with dementia, a family member, domestic partner or friend should help the person make legal plans. The sooner planning begins, the more likely it is that the person with dementia will be able to participate.

Legal planning includes:

- Making plans for health care and long-term care coverage.
- Making plans for finances and property.
- Naming another person to make decisions on behalf of the person with dementia.



The Alzheimer's Association strongly advises starting legal plans now. Inside, you'll find the basics on:

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**This brochure contains only general information and is not meant to be legal advice. Laws vary by state and are constantly changing. As a result, we make no warranty or guarantee of the accuracy or reliability of the information contained herein. You should consult a lawyer before acting on any information contained herein for advice specific to your situation.*

1. legal capacity

In most cases, if a person with dementia is able to understand the meaning and importance of a given legal document, he or she likely has the legal capacity to execute (to carry out by signing) it.

Legal capacity is the ability to understand and appreciate the consequences of one's actions and to make rational decisions.

The requirements of legal capacity can vary from one document to another. A lawyer can help determine what level of legal capacity is required for a person to sign a particular document.

Before a person with dementia signs a legal document:

Talk with the person

Find out if the person with dementia understands the legal document — and the consequences of signing it. Make sure the person knows what is being explained and what he or she is being asked to do.

Ask for medical advice

A doctor may be able to assist in determining the level of a person's mental ability.

Take inventory of existing legal documents

Verify whether living wills, trusts and powers of attorney were signed before the person was diagnosed. The person may no longer remember having completed them. Even if legal documents were completed in the past, it is important to review them with another person for necessary corrections and/or updates.



As long as the person with dementia* has legal capacity — the ability to understand and appreciate the consequences of his or her actions — he or she should take part in legal planning.

**While the following content and many of the definitions refer specifically to the circumstances of dementia, these general terms may refer to other legal situations as well.*

2 legal documents

Guardianship/conservatorship

If a person can no longer make his or her own financial and/or health care decisions, someone else may have to become the person's guardian (also known as a conservator in some U.S. states). A guardian or conservator is appointed by a court to make decisions about the person's care and property.

Guardianship is granted by the court when it finds that a person is totally or partially legally incapacitated. In the case of dementia and its effect on the brain, legal incapacity refers to the person's inability to make rational decisions about his or her care or property.

Once a court determines that an individual is legally incapacitated, it may appoint a guardian or conservator for that person. A guardian has the legal authority to make decisions about the person's care and custody.

While the process varies from state to state, after a person seeking guardianship files a petition in court, the court generally issues a summons (a notice to appear in court) and a copy of the petition (a formal application made to a court in writing) to the person with dementia. The petition includes the name of the person who wishes to be appointed guardian.

The person with dementia has an opportunity to object to the guardianship. The court will hold a hearing at which time he or she (or another individual) can object.

Couples who are not in legally recognized relationships are especially vulnerable to limitations regarding the ability to make decisions for each other, or even to obtain information about a partner's health status if legal documents are not completed. These laws vary from state to state. Please look into your local laws.

Living will

A living will is a document that expresses how a physically or mentally incapacitated person wishes to be treated in certain medical situations. It is generally something that an individual prepares and signs prior to his or her impairment.

In a living will, the person with dementia may state, among other things, his or her wishes regarding artificial life support. A living will generally comes into play once a doctor decides that a person is incapacitated and unable to communicate his or her desires regarding life-sustaining treatment. Depending on the state in which an individual resides, the state may require a particular form for a living will, or it may be drafted by the person's attorney.

Living trust

A living trust is created by a person who has legal capacity and is capable of his or her own decisions. A living trust is another way for the person to give instructions for managing property.

The person who creates the trust (called a grantor or trustor) appoints him- or herself (and possibly someone else) as trustee(s). If a single trustee is designated, the trust document should also specify a successor trustee, who will take over when/if the initial trustee is unable to serve due to incapacity or otherwise. A trustee is usually a person or an institution such as a bank. The trustee is responsible for carefully managing the property (assets) of the trust.

For the living trust to accomplish its goal, all assets should be transferred to the trust. For example, a bank account should be changed from the individual's name to the name of the living trust.

Depending on state law and an individual's personal circumstances, a living trust may allow an estate to avoid probate, i.e., the process used by the court to distribute the property of a person who has died. A living trust may or may not provide tax advantages.

Power of attorney

The power of attorney document allows a person with dementia (called the principal) to name another individual (called an attorney-in-fact or agent), usually a trusted family member, domestic partner or friend, to make financial and other decisions when the person with dementia is no longer able to do so for him- or herself. The agent should be chosen carefully; it is recommended that this individual have a thorough conversation with the principal about what the responsibility entails. In addition, a successor agent or agents should be named in the event the original agent is unavailable or unwilling to serve.

With regard to individuals with dementia, power of attorney documents should be written so that they are “durable,” meaning that they are valid even after the principal is incapacitated and can no longer make decisions for him- or herself. Unless a power of attorney is irrevocable, it can be changed or withdrawn by the principal at any time.

Power of attorney does not give the appointed person (agent) the authority to override the decision making of the person with dementia (principal). The person with dementia maintains the right to make his or her own decisions — as long as he or she has legal capacity — even if the decisions are not what others believe are good decisions.

The agent is authorized to manage and make decisions about the income and the assets of the principal. This agent is responsible for acting according to the instructions, and in the best interests, of the principal.

What's the difference between an agent and an executor? The powers of the agent (one who holds the power of attorney) end with the death of the principal. An executor's powers begin with the death of the principal once the will has been accepted by the court.

Power of attorney for health care

A power of attorney for health care allows a person with dementia to name a health care agent to make health care decisions on his or her behalf when he or she is incapable of doing so. These decisions include choosing:

- Doctors and other health care providers.
- Types of treatments.
- Care facilities.

For a person in the later stages of dementia, the health care agent may also make end-of-life decisions, such as providing nutrition through a feeding tube, or giving "do not resuscitate" (DNR) instructions to health care providers.

Will

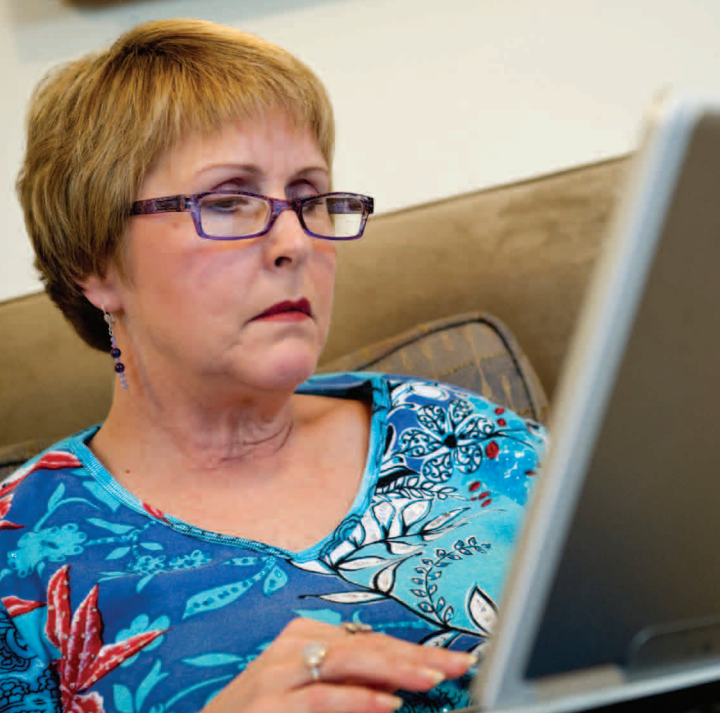
The will is a document identifying whom a person with dementia has chosen as:

- 1 Executor, the person who will manage the estate.
- 2 Beneficiaries, who will receive the assets in the estate.

The executor named in the will has no legal authority while the person is living. A will only takes effect when a person dies.

A will cannot be used to communicate health care preferences. However, it can offer peace of mind that a person's wishes will be fulfilled upon death.

While all people can benefit from having a will, it is especially important for a person with dementia. He or she should have a signed will in place as soon as possible, while he or she is still able to make decisions for him- or herself. Please note that the validity of a will is dependent on state law.



3. how to find a lawyer

It is a good idea to get legal advice and services from an attorney who specializes in elder law. Elder law focuses on guardianship, disability planning and other legal issues that typically affect older adults.

If you have a family attorney, he or she may be able to refer you to an elder law attorney. Your local Alzheimer's Association office can also provide a list of elder law attorneys in your area. To locate the Alzheimer's Association office nearest you, call [800.272.3900](tel:800.272.3900) or visit alz.org.

Free legal advice may be available in your community. Contact your local Area Agency on Aging or the Eldercare Locator at [800.677.1116](tel:800.677.1116) or visit eldercare.gov to find free legal resources.

4. how to prepare for a meeting with your lawyer

Gather all documents relating to the assets of the person with dementia ahead of time so you can show them to the lawyer.

Checklist for meeting with your lawyer:

- Itemized list of assets (e.g., bank accounts, contents of safe deposit boxes, vehicles, real estate, etc.), including current value and the names listed as owners, account holders and beneficiaries.
- Copies of all estate planning documents, including wills, trusts and powers of attorney.
- Copies of all deeds to real estate.
- Copies of recent income tax returns.
- Life insurance policies and cash values of policies.
- Health insurance policies or benefits booklets.
- Admission agreements to any health care facilities.
- List of names, addresses and telephone numbers of those involved, including family members, domestic partners and caregivers, as well as financial planners and/or accountants.



5. what to discuss with your lawyer

Be sure to talk to your lawyer about these three key issues and any other concerns you may have:

- 1 Options for health care decision making for the person with dementia.
- 2 Options for managing the person's personal care and property.
- 3 Possible coverage of long-term care services, including what is provided by Medicare, Medicaid, veteran benefits and other long-term care insurance.

6. terms your lawyer may use

Agent: The person given legal authority to make financial decisions for the person with dementia (*principal*) through a power of attorney document, usually a trusted family member, domestic partner or friend; see also *health care agent*.

Artificial life support: Medical equipment and other technology used to prolong the life of a seriously ill person by sustaining essential body functions (e.g., breathing).

Assets: Personal possessions of value, including cash, bank accounts, real estate, vehicles and investments.

Beneficiaries: The people named in a will or insurance policies to receive the estate of the person with dementia upon his or her death.

Conservator: A person appointed by the courts to make decisions on behalf of the person with dementia; referred to as the *guardian* in some U.S. states.

Custody: Legal responsibility for a person.



DNR: Stands for “*do not resuscitate*” and refers to a person's instructions that, if his or her heart or breathing stops, the doctor should not try to restart it.

Domestic partner: An individual who is part of an unmarried heterosexual or homosexual cohabitating couple. This may be especially significant when considering eligibility for spousal benefits. Definition may vary according to state and/or employer.

Durable: When a power of attorney document is durable, it is valid even after the principal can no longer make his or her own decisions.

Execute: To legally sign or carry out a legal document.

Executor: The person named in a will to manage the estate of the person with dementia upon his or her death. The executor of a will carries out the instructions of the deceased as outlined in the will.

Grantor: A person who arranges for his or her assets to be transferred to another person or entity, for example, the grantor of the John W. Smith Living Trust is John W. Smith; also called a *trustor*.

Guardian: The person appointed by the courts to make decisions on behalf of the person with dementia; referred to as the *conservator* in some U.S. states.

Health care agent: The person given legal authority to make health care decisions for the *principal* through a power of attorney for health care document; usually a trusted family member or friend.

Legal capacity: The ability to understand and appreciate the consequences of one's actions and to make rational decisions.



Principal: A person who, through a power of attorney document, legally chooses an individual to make decisions on his or her behalf.

Probate: The process used by the court to distribute the property of a person who has died.

Summons: A notice to appear in court. A summons is delivered to the person with dementia when a petition of guardianship or conservatorship has been filed on his or her behalf.

Trustee: The individual or institution chosen to manage the trust *assets* on behalf of the beneficiaries.

Trustor: The person for whom a living trust is created; for example, the trustor of the John W. Smith Living Trust is John W. Smith; also called a *grantor*.

quick tips

legal planning

- Those named in the power of attorney document should have a copy of and access to the original document.
- The person with dementia should name a successor (back-up) agent for power of attorney in the event that the agent may one day be unable to act.
- The person should consider a neutral third person to have power of attorney if those chosen may not agree.
- Once a power of attorney for health care document and/or a signed living will is in place, give a copy to the person's physicians and other health care providers.
- The person with dementia should decide if the agent with power of attorney for health care has authority to consent to a brain autopsy. This may vary according to state law.
- Consider choosing an attorney or a bank to manage the individual's estate if the person lacks a trusted individual with the time or expertise.

alzheimer's  association®

The Alzheimer's Association is the world's leading voluntary health organization in Alzheimer's care, support and research. Our mission is to eliminate Alzheimer's disease through the advancement of research; to provide and enhance care and support for all affected; and to reduce the risk of dementia through the promotion of brain health.

Our vision is a world without Alzheimer's disease.

For information and support,
contact the Alzheimer's Association:

800.272.3900
alz.org

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